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No. 80-1240

In the Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL P. LANE, Director,
Illinois Department of Corrections,

Petitioner,

v.

LAWRENCE WILLIAMS and
OSCAR SOUTHALL,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT:

THE COURT OF APPEALS' DECISION IN THIS CASE CONFLICTS WITH THIS COURT'S RECENT DECISION IN *UNITED STATES V. TIMMRECK* AND THEREBY GOES BEYOND THE DUE PROCESS REQUIREMENTS PREVIOUSLY ENUNCIATED BY THIS COURT PERTAINING TO "KNOWING AND VOLUNTARY" GUILTY PLEAS 1

CONCLUSION 4

TABLE OF AUTHORITIES

	PAGE
CASES:	
People v. Krantz, 58 Ill. 2d 187, 317 N.E.2d 559 (1974)	2
Santobello v. New York, 404 U.S. 257 (1971)	1
United States v. Timmreck, 441 U.S. 780 (1979)	2, 3
United States ex rel. Williams v. Morris, 594 F.2d 614 (7th Cir. 1979)	3
STATUTES:	
Ill. Rev. Stat., 1975, ch. 38, § 1005-8-1(e)	1
Ill. Rev. Stat., 1975, ch. 110 A, § 402	2

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ARGUMENT

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Respondents perceive the instant case as a case involving "the failure of the State to live up to its agreements." Respondents' Brief at 6-7. They place primary reliance upon this Court's decision in *Santobello v. New York*, 404 U.S. 257 (1971), wherein this Court stated that:

> [A] constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

404 U.S. at 262; Respondents' Brief at 9-10.

In relying upon *Santobello*, respondents fail to recognize that the mandatory parole terms, with which we are concerned, automatically attached, by operation of law, to every felony sentence involving incarceration entered in Illinois after January 1, 1973. *See Ill. Rev. Stat.*, 1975, ch. 38, § 1005-8-1(e). Because of this fact, there really was no promise or even agreement with the prosecutor which could be said to have been "part of the inducement or consideration" for the guilty pleas. The mandatory parole terms attached automatically whether respondents were to receive one year imprisonment or twenty years imprisonment, and nothing which the prosecutor or judge could have said or done would have changed that fact. Thus, absent an allegation that respondents would not have pled guilty had they known of the existence of the parole terms prior to the entry of their pleas, it simply cannot be said that the failure to admonish respondents of the existence of the parole terms acted as part of the "inducement or consideration" of their plea bargains.[1]

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[1] Additionally, it should again be noted that at the time of the guilty pleas herein, the Illinois Supreme Court appeared to have affirmatively held that a mandatory parole term admonishment need *not* be given to a defendant who wished to plead guilty. *People v. Krantz*, 58 Ill. 2d 187,

Additionally, it appears that each respondent, while apparently unaware of the existence of the mandatory parole term at the time of his plea, did, in fact, become aware of the term prior to his release from prison on parole. Nevertheless, each chose to disregard the possible consequences, for within a relatively short period of time, each voluntarily violated the terms of his parole and was reincarcerated. Thus, even if an admonishment at the time of the actual plea would have been a better policy to follow, the respondents were not prejudiced by the court's failure to warn them of the parole terms at that time. This view is buttressed by the fact that neither respondent has alleged that he would not have pled guilty had he been advised of the parole term.

In short, the failure to admonish in the instant proceeding was, at most, a technical violation of Illinois Supreme Court Rule 402. *Ill. Rev. Stat.*, 1975, Ch. 110A, § 402. As such, this Court's decision in *United States v. Timmreck*, 441 U.S. 780 (1979), should control.

In *Timmreck*, the defendant was not admonished as to the parole term at the time he pled guilty. Subsequently, he became aware of the term. His destiny was in his own hands. Only if he chose not to act within the confines of the law could he have been reincarcerated. The same facts are present in this case and the same conclusion as was reached in *Timmreck* should be reached here.

Finally, petitioner does not suggest that respondents "not be allowed an avenue to enforce their agreements with the state." Defendants' Brief at 14. Direct appeal, or as was

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317 N.E.2d 559, 564 (1974). A trial judge, and for that matter, any lawyer, who kept up with the decisions of the Illinois Supreme Court could scarcely be faulted for believing that such admonishments were therefore not required in March, 1975.

recognized in the appeal in *Williams* I [*United States ex rel. Williams v. Morris*, 594 F.2d 614 (7th Cir. 1979)] an Illinois post-conviction hearing act petition, provides ample opportunity for judicial review. What petitioner does suggest, however, is that federal habeas corpus relief not be imposed upon a sovereign state, where no federal constitutional right has been violated.

CONCLUSION

For the foregoing reasons, as well as the reasons mentioned in our initial brief, petitioner urges this Court to reverse that portion of the court of appeals' decision which granted habeas corpus relief to the respondents.

Respectfully submitted,

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